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8                   UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA  
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10 STELLA SATTER,

11                   Plaintiff,

12                   v.

13                   WASHINGTON STATE DEPARTMENT  
14                   OF ECOLOGY, et al.,

15                   Defendants.

CASE NO. C09-5645BHS

ORDER DENYING  
PLAINTIFF'S MOTION  
TO AMEND COMPLAINT

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17                  This matter comes before the Court on Plaintiff Stella Satter's ("Satter") Motions  
18                  for Relief from Order and to Amend Complaint ("motion to amend"). Dkt. 52. The  
19                  Court has considered the pleadings filed in support of and in opposition to the motion and  
20                  the remainder of the file and hereby denies Satter's motion for the reasons stated herein.

21                   **I. PROCEDURAL HISTORY**

22                  On September 29, 2009, Satter filed a complaint against Defendants, including  
23                  Ken Slattery ("Slattery") and Department of Ecology ("DOE"), in Thurston County  
24                  Superior Court. Dkt. 1-3. Included in her complaint, as the first cause of action, is the  
25                  allegation that Slattery, under color of state law, violated her rights under the United  
26                  States Constitution by creating a prior restraint to her ability to engage in free speech  
27                  about matters that potentially could be of public concern. Dkt. 1-3 at 17-18 ¶ 4.2. On

1 May 20, 2010, Satter filed her motion to amend (Dkt. 52) seeking to add DOE as a  
2 Defendant “to the first cause of action, which currently alleges the First Amendment Prior  
3 Restraint violation against only defendant Ken Slattery.” Dkt. 52 at 1. Further, Satter’s  
4 motion seeks to strike the cause of action contained in paragraph 4.4 of her complaint  
5 (Dkt. 1-3) in order to conform to the parties’ stipulation to dismiss such claim. On May  
6 26, 2010, Defendants responded (Dkt. 56).

## 7 II. DISCUSSION

8 After an answer has been filed, a party may amend its pleading only with the  
9 opposing party’s written consent or leave of court. Fed. R. Civ. P. 15(a)(2). The court  
10 should freely give leave when justice so requires. *Id.* When deciding whether to grant  
11 leave to amend, courts consider five additional factors: “(1) bad faith, (2) undue delay, (3)  
12 prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has  
13 previously amended his complaint.” *See Allen v. City of Beverly Hills*, 911 F.2d 367, 373  
14 (9th Cir. 1990).

15 First, the Court notes that it has previously issued an order granting the parties’  
16 stipulation to the dismissal of Satter’s claim contained in paragraph 4.4 of her complaint  
17 and dismissing such claim. Dkt. 48. Therefore, Satter’s motion is denied as moot with  
18 respect to amending her complaint to reflect the dismissal of this claim.

19 Next, the Court reviews Satter’s motion to amend to add defendant DOE as a party  
20 to the first cause of action in her complaint. Dkt. 56 at 1-4. On June 8, 2010, the Court  
21 granted Defendants’ motion for partial summary judgment on this cause of action as  
22 alleged against Slattery. Dkt. 56. In the Court’s order, it concluded that although Slattery  
23 had created a prior restraint on Satter’s speech, under *Pickering*, such restraint did not  
24 violate the First Amendment as the government’s interests outweighed those of Satter. *Id.*  
25 at 8-11. As DOE’s interests are the same as the government interests that were  
26 considered in Satter’s claim against Slattery, the cause of action regarding the prior  
27 restraint, if brought against DOE, would have the same result. *See id.* Therefore, the

1 Court concludes that Plaintiff's amendment would be futile. *See Allen*, 911 F.2d at 374  
2 (affirming district court's denial of plaintiff's motion to amend complaint when such  
3 amendment "would likely prove futile").

4 **III. ORDER**

5 Therefore, it is hereby **ORDERED** that Satter's motion to amend (Dkt. 52) is  
6 **DENIED**.

7 DATED this 30th day of June, 2010.

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11 BENJAMIN H. SETTLE  
12 United States District Judge  
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